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THE COCA-COLA COMPANY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NICOLE FRITCH, an individual, on  
behalf of herself and on behalf of all  
persons similarly situated,

Plaintiff,

v.

THE COCA-COLA COMPANY, a  
Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL OF  
CIVIL ACTION TO FEDERAL  
COURT BY DEFENDANT THE  
COCA-COLA COMPANY**

**[28 U.S.C. §§ 1332, 1441, & 1446]**

Complaint Filed: February 1, 2023  
Trial Date: None Set

1 **TO THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES**  
 2 **DISTRICT COURT IN AND FOR THE CENTRAL DISTRICT OF**  
 3 **CALIFORNIA, PLAINTIFF NICOLE FRITCH AND HER ATTORNEYS OF**  
 4 **RECORD:**

5 **PLEASE TAKE NOTICE** that Defendant THE COCA-COLA COMPANY  
 6 (“Defendant”) hereby removes the action filed by Plaintiff NICOLE FRITCH  
 7 (“Plaintiff”) captioned NICOLE FRITCH v. THE COCA-COLA COMPANY, and  
 8 DOES 1 through 50, inclusive, pending before the Superior Court of the State of  
 9 California for the County of Orange, Case No. 30-2023-01305257-CU-OE-CXC, to  
 10 the United States District Court for the Central District of California. This removal  
 11 is based on 28 U.S.C. §§ 1332, 1441, and 1446. Pursuant to 28 U.S.C. § 1446(d),  
 12 Defendant will also file a copy of this Notice of Removal with the Superior Court,  
 13 County of Orange.

14 **I. STATEMENT OF JURISDICTION**

15 1. This Court has original jurisdiction over this action under the Class  
 16 Action Fairness Act of 2005 (“CAFA”), which vests the United States District Courts  
 17 with original jurisdiction of any civil action: (a) that is a class action with a putative  
 18 class of more than a hundred members; (b) in which any member of a class of  
 19 plaintiffs is a citizen of a State different from any defendant; and (c) in which the  
 20 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests  
 21 and costs. 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions under  
 22 United States Code, Title 28 § 1446. This case meets all CAFA’s requirements for  
 23 removal as set forth below and properly removed by filing this Notice of Removal.

24 2. This Court has also original jurisdiction over this matter based on  
 25 diversity of citizenship pursuant to 28 U.S.C. § 1332(a). Defendant may remove this  
 26 matter to this Court pursuant to 28 U.S.C. § 1441(b) because it is a civil action  
 27 between citizens of different states, and the amount in controversy exceeds \$75,000,  
 28 exclusive of interest and costs, as set forth below.

## II. PROCEDURAL BACKGROUND

3. On February 1, 2023, Plaintiff commenced this action by filing a complaint in the Superior Court of California, County of Orange styled: Nicole Fritch, an individual, on behalf of herself and on behalf of all persons similarly situated v. The Coca-Cola Company, a Corporation; and DOES 1 through 50, inclusive, Case No. 30-2023-01305257-CU-OE-CXC (“Complaint” or “Compl.”). (Declaration of Sophia Collins [“Collins Decl.”], ¶ 2, Exh. A.) The Complaint asserts thirteen causes of action: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200, et seq.; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Required Meal Periods; (5) Failure to Provide Required Rest Periods; (6) Failure to Provide Accurate Itemized Statements; (7) Failure to Reimburse Employees for Required Expenses; (8) Failure to Provide Wages When Due; (9) Failure to Pay Sick Pay Wages; (10) Discrimination and Retaliation; (11) Failure to Engage in the Interactive Process; (12) Failure to Provide Reasonable Accommodation; and (13) Wrongful Termination in Violation of Public Policy. (*Id.*)

4. On March 3, 2023, Plaintiff served Defendant’s agent for service of process with Plaintiff’s Complaint along with a Summons, Civil Case Cover Sheet, Alternative Dispute Resolution Information Package. (*Id.* at ¶ 6, Exh. E.)

5. Under 28 U.S.C. section 1446(d), Exhibits A-G to the Collins Declaration constitutes all process, pleadings, and orders served upon Defendant or filed or received by it in this action. To Defendant’s knowledge, no further process, pleadings, or orders related to this case have been filed in Orange County Superior Court. (*Id.* at ¶ 9.)

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### III. REMOVAL PROCEDURE

#### A. Removal Is Timely Because Notice And The Accompanying Pleadings Have Been Filed Within Thirty Days

6. An action may be removed from state court by filing a notice of removal, with a copy of all process, pleadings, and orders served on the defendant, within thirty days of service of this initial pleading, and within one-year of the commencement of the action. 28 U.S.C. § 1446(a), (b); *Murphy Bros., Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the thirty-day removal period runs from the service of the summons and complaint). Removal is timely because this Notice was filed within thirty days from March 3, 2023, when Defendant was served with the Complaint. (*See* Collins Decl., ¶ 6, Exh. E; *see also* 28 U.S.C. § 1446(b).) As referenced above, this Notice also contains all process, pleadings, and orders that Plaintiff served on Defendant. (*See* Collins Decl. at ¶¶ 2-9, Exh. A-G.)

#### B. Venue Is Proper In This District Pursuant To The Removal Statute And Diversity.

7. Venue is proper in this Court because Plaintiff originally filed this action in Orange County Superior Court, located within the District and Division of this Court. 28 U.S.C. §§ 84(c)(3), 1441(a), and 1446(a).

### IV. REMOVAL JURISDICTION UNDER CAFA

#### A. This Court Has Original Jurisdiction Under CAFA

8. This Court has jurisdiction over this action under CAFA because: (1) Plaintiff filed a class action on behalf of a class with over 100 putative class members; (2) at least one member of Plaintiff's class is a citizen of a state different than Defendant; and (3) the amount in controversy exceeds five million dollars, exclusive of interest and costs. 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446. As set forth below, this case meets each CAFA requirement for removal.

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**B. Diversity Exists Because Plaintiff Is A California Citizen And Defendant Is A Citizen Of Delaware And Georgia**

9. CAFA diversity jurisdiction exists when “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. §§ 1332(d)(2)(A). Diversity of citizenship exists here because Plaintiff is a citizen of California and Defendant is a citizen of different states—Georgia and Delaware.

**1. Plaintiff Is A Citizen Of California.**

10. To establish citizenship for diversity purposes, a natural person must be a citizen of the United States and be domiciled in a particular state. *Bank of N.Y. Mellon v. Nersesian*, 2013 WL 8284799, at \*3 (C.D. Cal. Apr. 16, 2013) (citing *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983)). Persons are domiciled in the places they reside with the intent to remain or to which they intend to return. *Id.*

11. Residence is *prima facie* evidence of one’s domicile. *Sadeh v. Safeco Ins. Co.*, 2012 WL 10759737, at \*2 (C.D. Cal. June 12, 2012) (citing *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)). Further, employment in a state is evidence of domicile in that state. *See Lew v. Moss*, 797 F.2d 747, 750 (1986). At all relevant times pertinent to this lawsuit, Plaintiff maintained an address in California. (Declaration of Dawn Kopra (“Kopra Decl.”) ¶ 8.) Plaintiff was employed by Defendant in the State of California. (*Id.*; see *Complaint*, ¶ 3.) When Plaintiff filed her Complaint, she resided in the State of California, and was domiciled in and was a citizen of the State of California. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001); see also, *District of Columbia v. Murphy*, 314 U.S. 441, 455 (1941) (“place where a man lives is properly taken to be his domicile until the facts adduced establish the contrary”).

12. Moreover, there are members of the putative class<sup>1</sup> who are also citizens

<sup>1</sup> Defined by Plaintiff as “all individuals who are or previously were employed by Defendant in California, including any employees staffed with Defendant by a third party, and classified as non-exempt employees . . . at any time during the period beginning four (4) years prior to the filing of

1 of California. From February 1, 2023 through the present, several putative class  
 2 members maintain addresses in California and work for Defendant in the State of  
 3 California. 28 USC 1332(d)(2)(A); 28 U.S.C. §1332(d)(7). (Kopra Decl., ¶ 9.)

## 4 **2. Defendant Is A Citizen Of Delaware And Georgia.**

5 13. For diversity jurisdiction, a corporation is deemed a citizen of its state  
 6 of incorporation and the state where it has its principal place of business. *See* 28  
 7 U.S.C. § 1332(c)(1). At all times since at least February 1, 2023 through the present,  
 8 Defendant was, and continues to be, a corporation organized under the laws of the  
 9 State of Delaware. (Kopra Decl. ¶ 2.) To determine a corporation's principal place  
 10 of business, courts apply the "nerve center test," which deems the principal place of  
 11 business to be the state where a corporation's officers "direct, control, and coordinate  
 12 the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010). In  
 13 practice, the principal place of business is "where the corporation maintains its  
 14 headquarters." *Id.* at 92-93. In other words, a defendant's principal place of business  
 15 is where its officers direct, control, and coordinate its activities. *Id.* At all times since  
 16 at least February 1, 2023 through the present, Defendant's principal place of business  
 17 is in Atlanta, Georgia, where its corporate offices and headquarters are located.  
 18 (Kopra Decl. ¶ 2.) Defendant's corporate officers work at its headquarters in Atlanta,  
 19 Georgia, and they direct, control and coordinate activities for Defendant while based  
 20 in Atlanta, Georgia. Defendant intends to keep its principal place of business in  
 21 Georgia. (Kopra Decl. ¶ 2.) A person's state residency is also "her domicile, her  
 22 permanent home, where she resides with the intention to remain or [if not there in the  
 23 state currently] the state to which she intends to return." *Kanter*, 265 F.3d at 857.  
 24 Defendant is therefore a citizen of Delaware and Georgia, where it is incorporated  
 25 and where it has its principal place of business.

26 14. For purposes of removal, the citizenship of doe defendants is  
 27 \_\_\_\_\_  
 28 this Complaint and ending on the date as determined by the Court. " (Exh. A, Compl. at ¶ 4.)  
 Defendant denies Plaintiff's allegation that the alleged claims are appropriate for class treatment.



1 disregarded and only named defendants are considered. 28 U.S.C. § 1441(b)(1); *see*  
 2 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686 (9th Cir. 1998). Therefore, the  
 3 defendants designated as DOES I through 25 are fictitious defendants, are not parties  
 4 to this action, have not been served, and are to be disregarded for purposes of this  
 5 removal. 28 U.S.C. § 1441(a), (b).

6 **C. The Proposed Class Contains At Least 100 Members.**

7 15. CAFA provides this Court with jurisdiction over a class action when  
 8 “the number of members of all proposed plaintiff classes in the aggregate [is not] less  
 9 than 100.” 28 U.S.C. § 1332(d)(5)(B). CAFA defines “class members” as those  
 10 “persons (named or unnamed) who fall within the definition of the proposed or  
 11 certified class in a class action.” 28 U.S.C. § 1332(d)(1)(D).

12 16. Plaintiff seeks to represent “all individuals who are or previously were  
 13 employed by Defendant in California, including any employees staffed with  
 14 Defendant by a third party, and classified as non-exempt employees . . . at any time  
 15 during the period beginning four (4) years prior to the filing of this Complaint and  
 16 ending on the date as determined by the Court”. (Exh. A, Compl. at ¶ 4.) From  
 17 February 1, 2019 to February 25, 2023, Defendant employed approximately 867  
 18 persons in non-exempt positions in California. (Kopra Dec. ¶ 4.) Of those 867  
 19 persons employed, 784 employees had at least one pay period of payroll data with  
 20 time worked. (*Id.*) This satisfies CAFA’s numerosity requirement. 28 U.S.C. §  
 21 1332(d)(5)(B).

22 **D. The Amount In Controversy Exceeds Five Million Dollars Based On**  
 23 **The Damages and Statutory Penalties Sought By Plaintiff.**

24 17. CAFA requires the “matter in controversy” to exceed “the sum or value  
 25 of \$5,000,000 exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). To remove a  
 26 case from a state court to a federal court, a defendant must file a notice of removal  
 27 containing a short and plain statement of the grounds for removal. *Dart Cherokee*  
 28 *Basin Operating Company LLC v. Brandon W. Owens*, 135 S. Ct. 547, 551 (2014).

1 When a plaintiff's complaint does not state the amount in controversy, defendant's  
 2 notice of removal must simply include "a plausible allegation that the amount in  
 3 controversy exceeds the jurisdictional threshold." *Id.* at 554; *Ibarra v. Manheim*  
 4 *Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015) (same, quoting *Dart*).  
 5 Evidence establishing the amount in controversy is only required when plaintiff  
 6 contests, or the court questions defendant's allegations. *Dart*, 135 S. Ct. at 551.  
 7 Otherwise "the defendant's amount-in-controversy allegation should be accepted"  
 8 just as a plaintiff's amount-in-controversy allegation is accepted when a plaintiff  
 9 invokes federal court jurisdiction. *Id.* at 553.

10 18. "The claims of the individual class members shall be aggregated to  
 11 determine whether the matter in controversy exceeds" this amount. 28 U.S.C. §  
 12 1332(d)(6). "In measuring the amount in controversy, a court must assume that the  
 13 allegations of the complaint are true and that a jury will return a verdict for the  
 14 plaintiff on all claims made in the complaint." *Kenneth Rothschild Trust v. Morgan*  
 15 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002). The ultimate  
 16 inquiry is what amount is put "in controversy" by the plaintiff's Complaint, not what  
 17 a defendant will actually owe. *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986  
 18 (S.D. Cal. 2005); *see also Ibarra*, 775 F.3d at 1198 n. 1 (explaining that even when  
 19 the court is persuaded the amount in controversy exceeds \$5 million, defendants are  
 20 still free to challenge the actual amount of damages at trial because they are only  
 21 estimating the damages in controversy).

22 19. Defendant denies the validity and merits of Plaintiff's claims, the legal  
 23 theories upon which they are purportedly based, the claims for monetary and other  
 24 relief that flow from them, and that this case or any of Plaintiff's claims are  
 25 appropriate for class treatment. But based on Plaintiff's allegations, and assuming  
 26 the alleged facts and legal theories are all true, the amount in controversy exceeds  
 27 five million dollars even without considering the amount in controversy for all claims  
 28 alleged.



20. Plaintiff alleges a cause of action for violation of the Unfair Competition Law (“UCL”), Business and Professions Code sections 17200, *et seq.* (Ex. A, Complaint at ¶¶ 48-62). Alleging a UCL violation extends the statute of limitations on Plaintiff’s wage and hour claims from three years to four years from the filing of the Complaint, or going back to February 1, 2019. *See* Cal. Bus. & Prof. Code § 17208; *Cortez v. Purolater Air Filtration Products Co.*, 23 Cal. 4th 163, 178-79 (2000) (four-year statute of limitations for restitution of wages under the UCL).

**1. There Is More Than Ten Million In Controversy For The Rest Break Claim Alone, Or, Even Conservatively Estimated, At Least Two Million In Controversy Based On Plaintiff’s Meal And Rest Break Claims.**

21. Plaintiff’s fourth and fifth causes of action assert that Defendant is liable for not providing meal and rest periods. (Exh. A, Compl. at ¶¶ 92-99.) California law requires employers to provide paid 10-minute rest breaks for each four hours worked, or major fraction thereof, and 30-minute meal periods at prescribed times. *See* Industrial Welfare Commission Wage Order No. 4; Cal. Lab. Code §§ 226.7, 512. An employer who fails to provide a meal or rest period is liable for “one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code § 226.7(b). Here, Plaintiff and the putative class “may recover up to two additional hours of pay on a single work day for meal period and rest period violations—one for failure to provide a meal period and another for failure to provide a rest period.” *United Parcel Serv. Wage & Hour Cases*, 196 Cal. App. 4th 57, 70 (2011). The amount in controversy as it relates to Plaintiff’s fourth and fifth causes of action will be calculated by:

Hourly Rate x Number of Alleged Unpaid Rest Breaks + Hourly Rate x Number of Alleged Unpaid Meal Breaks.

a. Hourly Rate. The average regular rate of pay for the 784 employees from February 1, 2019 to February 25, 2023 is \$28.06 per hour. (Kopra

Decl. ¶ 4.)

b. Number of alleged unpaid meal and rest breaks. From February 1, 2019 through February 25, 2023, the putative class members worked approximately 77,662 workweeks. (Kopra Decl. ¶ 4.) As an initial matter, Plaintiff alleges that the putative class was never provided compliant rest breaks because, “DEFENDANT’S policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT’s rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.” (Exh. A, Compl. at ¶ 12.) Assuming for purposes of removal only that Defendant’s rest break policy failed to provide any rest breaks as alleged, the amount in controversy for the rest period claim alone is approximately over \$10,890,000.

22. Putting the above aside, Plaintiff also alleges that “Defendant from time to time failed to provide all the legally required off-duty meal breaks” and “these employees from time to time were denied their first rest periods”. (Exh. A, Compl. at ¶¶ 93, 97.) Where a plaintiff does not assert a uniform policy and practice of violations, courts have held that an employer need make only a reasonable assumption on its estimate of violations. *See Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1198-99 (9th Cir. 2015); *Oda v. Gucci Am, Inc.*, 2015 WL 93335, at \*5-6 (C.D. Cal. Jan. 7, 2015) (reasonable to apply a 50% rate of violation where plaintiff alleged that class members “sometimes did not receive all of their meal periods in a lawful fashion” and that “not all rest periods were given timely, if at all”). Here, assuming just a 10% violation rate for meal and rest breaks (*i.e.*, one meal period violation in 10 workdays and one rest period violation in 10 workdays), the amount in controversy related to these two claims is at least approximately **\$2,179,195.72** [\$28.06 per hour x 77,662 workweeks x 5 days per week x 10% violation rate x 2 (one meal break and one rest break)].

2. **There Is At Least \$1.7 Million In Controversy Based On Plaintiff's Wage Statement Claims.**

23. Plaintiff's sixth cause of action alleges Defendant violated Labor Code section 226 by failing to provide accurate itemized wage statements. (Exh. A, Compl. at ¶¶ 100-103.) Plaintiff alleges that Defendant failed to provide wage statements that accurately provided the information required by section 226(a), including the gross and net wage earned, applicable hourly rates, and total hours worked each pay period. (*Id.* at ¶¶ 14, 102.) Plaintiff also alleges that the wage statements fail to "list[] all the requirements under California Labor Code 226 *et seq.*" (*Id.* at ¶ 14.) This claim is based in part on Plaintiff's allegations that Defendant implemented a purported policy that improperly rounded work time, a purported practice that required putative class members to work off the clock, and Defendant failed to provide rest periods by unlawfully requiring employees to remain on premises during rest breaks:

DEFENDANT, as a matter of established company *policy* and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time.

DEFENDANT engages in the *practice* of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clocking that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday.

DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

(*Id.* at ¶¶ 8, 12, 63, 68-70, 96, 98 (emphasis added).)

24. Based on the above allegations of a policy and practice, a 100% wage statement violation rate is reasonable because every wage statement is inaccurate and

1 subject to penalties. *See Sanchez v Abbott Laboratories*, 2021 WL 2679057, at \*6  
2 (E.D. Cal. June 29, 2021). The statutory penalty for such a violation is \$50 for the  
3 first pay period, and \$100 for each subsequent pay period, up to a total maximum  
4 penalty of \$4,000. *See* Lab. Code § 226(e). Section 226(e) has a one-year statute of  
5 limitations. *Blackwell v. SkyWest Airlines, Inc.*, 245 F.R.D. 453, 462 (S.D. Cal.  
6 2007). There are 784 putative class members who have received wage statements  
7 since February 1, 2022. (Kopra Decl. ¶ 4.) There were 18,076 pay periods from  
8 February 1, 2022 to February 25, 2023. (*Id.*) Applying the statutory penalties for the  
9 pay periods as to each employee, the amount in controversy as to Plaintiff's sixth  
10 cause of action is calculated by: 784 putative class members x \$50 penalty for the  
11 initial wage statement violation + 17,292 pay periods x \$100 penalty for each  
12 subsequent pay period = \$1,768,400. Thus, the amount in controversy for Plaintiff's  
13 failure to provide accurate wage statements claim is **\$1,768,400**.

14 **3. There Is At Least Seven Hundred And Fifty Thousand In**  
15 **Controversy Based On Plaintiff's Expense Reimbursement**  
16 **Claim**

17 25. Plaintiff's seventh cause of action alleges failure to reimburse  
18 employees for required expenses. (Exh. A, Compl. at ¶¶ 104-107.) Plaintiff alleges  
19 that Defendant's policy and practice was not to reimburse the putative class members  
20 for expenses resulting from using their personal cellular phones and home offices  
21 within the course and scope of their employment for Defendant. (*Id.* at ¶ 106.)  
22 Plaintiff demands reimbursement for expenditures or losses incurred by herself and  
23 the putative class members with interest at the statutory rate and costs under  
24 California Labor Code section 2802. (*Id.* at ¶ 107.) The putative class members  
25 worked approximately 77,662 weeks from February 1, 2019 to February 25, 2023.  
26 (Kopra Decl. ¶ 4.) Assuming a reasonable weekly expense of \$10, the amount in  
27 controversy on this claim is approximately **\$776,620.00** [77,662 weeks x \$10 per  
28 week].

1                   **4. There Is At Least \$2.4 Million In Controversy Based On**  
2                   **Plaintiff's Waiting Time Penalty Claims.**

3           26. Plaintiff's eighth cause of action alleges waiting time penalties for  
4 Defendant's failure to pay final wages when due. (Exh. A, Compl. at ¶¶ 108-115.)  
5 California Labor Code section 203 provides for one-day's wages for each day an  
6 employee who has separated from his or her employment is not paid all wages owed,  
7 up to thirty days of wages. *See* Cal. Labor Code § 203. Section 203 has a three-year  
8 statute of limitations. *Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389, 1398 (2010).  
9 Here, the three-year statute of limitations places waiting time penalties since  
10 February 1, 2020 in controversy. Since February 1, 2020, 359 putative class  
11 members' employment have ended with Defendant. (Kopra Decl. ¶ 4.) Assuming an  
12 eight-hour shift, the amount in controversy as it relates to this cause of action is  
13 **\$2,417,649.60** [359 former employees x \$28.06 per hour (average regular rate of pay)  
14 x 8 hours per day x 30 days].

15                   **5. Plaintiff's Attorneys' Fees Increases The Amount In**  
16                   **Controversy By \$1.7 Million**

17           27. Plaintiff seeks attorneys' fees and costs in her Complaint, which must  
18 also be considered in determining whether the jurisdictional limit is met. (Exh. A,  
19 Compl., Prayer for Relief.) Thus, the Court must consider attorneys' fees in  
20 determining whether the amount in controversy is met as it is well-settled that claims  
21 for statutory attorneys' fees are to be included in the amount in controversy. *See,*  
22 *e.g., Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), *cert. denied*, 127  
23 S.Ct. 157 (2006); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998)  
24 ("We hold that where an underlying statute authorizes an award of attorneys' fees,  
25 either with mandatory or discretionary language, such fees may be included in the  
26 amount in controversy").

27           28. In California, it is not uncommon for an attorneys' fee award to be  
28 twenty-five to thirty-three percent of a settlement or judgement. *See, e.g., McGuigan*  
*v. City of San Diego*, 183 Cal. App. 4th 610, 617 (2010) (noting attorneys' fees paid

1 in settlement of \$1.6 million); *Vasquez v. Cal.*, 45 Cal.4th 243, 249 (2008) (noting  
2 award of \$435,000 in attorneys' fees for class claims involving failure to pay wages,  
3 liquidated damages, penalties and waiting time penalties); *Amaral v. Cintas Corp.*  
4 *No. 2*, 163 Cal.App.4th 1157, 1216–18 (2008) (affirming award of \$727,000 in  
5 attorneys' fees plus a multiplier that equated to total fees of \$1,199,500 in class case  
6 involving violations of a living wage ordinance, the California Labor Code, as well  
7 as unfair competition and contract claims); *c.f.*, *Shaw v. Toshiba Am. Info. Sys., Inc.*,  
8 91 F.Supp.2d 942, 972 (E.D. Tex. 2000) ("Empirical studies show that, regardless  
9 whether the percentage method or the lodestar method is used, fee awards in class  
10 actions average around one-third of the recovery.").

11 29. The attorneys' fees benchmark in the Ninth Circuit is 25%. *Paul,*  
12 *Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989) ("We note  
13 with approval that one court has concluded that the 'bench mark' percentage for the  
14 fee award should be 25 percent.") (citation omitted); *Lo v. Oxnard Euro. Motors,*  
15 *LLC*, 2012 US. Dist. LEXIS 73983, \*8-9 (S.D. Cal. May 29, 2012) ("The Ninth  
16 Circuit has accepted as a benchmark for an attorneys' fees award twenty-five percent  
17 of the common fund recovery.").

18 30. As explained above, based on Plaintiff's allegations and the causes of  
19 action asserted, Plaintiff has placed approximately \$7,141,865.32 in controversy.  
20 Taking into account attorneys' fees at the benchmark percentage of 25% further  
21 increases the amount in controversy. The Court should therefore consider  
22 attorneys' fees of at least \$1,785,466.33 for a total amount in controversy of  
23 \$8,927,331.65.

24 **6. There Is At Least \$8.9 Million In Controversy, Well Over**  
25 **The Jurisdictional Minimum.**

26 31. As explained above, Plaintiff's rest break claim alone, as alleged, places  
27 more than ten million in controversy, which well exceeds the minimum required  
28 under CAFA. However, even putting aside Plaintiff's contention that all rest breaks



were not provided, a conservative estimate of the aggregate amount exceeds the \$5 million jurisdictional minimum, as follows:

Plaintiff's Cause of Action	Amount in Controversy
Meal and Rest Break Premiums	\$2,179,195.72
Wage Statement Penalties	\$1,768,400
Expense Reimbursements	\$776,620.00
Waiting Time Penalties	\$2,417,649.60
Attorneys' Fees	\$1,785,466.33
<b>Total</b>	<b>\$8,927,331.65</b>

32. The above total amount in controversy does not even account for the damages sought by Plaintiff for her claims for unpaid minimum wages, overtime wages, or sick pay wages. Therefore, it is without question that Plaintiff's Complaint places the "amount in controversy" well over the jurisdictional minimum of \$5 million under CAFA. 28 U.S.C. § 1332(d)(2).

**V. DIVERSITY JURISDICTION PURSUANT TO 28 U.S.C. § 1332.**

33. This Court also has original jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) ("Section 1332"). This case may be removed pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil action wherein the amount in controversy for Plaintiff's individual claims exceed the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, and it is between "citizens of different States." As set forth below, this case meets all of Section 1332's requirements for removal.

**A. Complete Diversity Of Citizenship Exists**

34. As explained above, Plaintiff and Defendant are citizens of different states. *See* ¶¶ 10-13, *supra*.

35. For purposes of removal, the citizenship of doe defendants is

1 disregarded and only named defendants are considered. 28 U.S.C. § 1441(b)(1); *see*  
2 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686 (9th Cir. 1998). Therefore, the  
3 defendants designated as DOES I through 25 are fictitious defendants, are not parties  
4 to this action, have not been served, and are to be disregarded for purposes of this  
5 removal. 28 U.S.C. § 1441(a), (b).

6 **B. The Amount In Controversy Exceeds \$75,000.**

7 36. Where removal is based on diversity of citizenship and the initial  
8 pleading seeks a money judgment but does not demand a specific sum, “the notice of  
9 removal may assert the amount in controversy,” 28 U.S.C. § 1446(c)(2), and a  
10 removing defendant “need include only a plausible allegation that the amount in  
11 controversy exceeds the jurisdictional threshold.” *Dart*, 135 S. Ct. at 554. Here, the  
12 Complaint does not indicate a total amount of damages Plaintiff seeks to recover on  
13 her individual claims. Consequently, Defendant only needs to show by a  
14 preponderance of the evidence (that it is more probable than not) that Plaintiff’s  
15 claimed damages exceed the jurisdictional minimum. *Sanchez v. Monumental Life*  
16 *Ins. Co.*, 95 F.3d 856, 862 (9th Cir. 1996).

17 37. In measuring the amount in controversy, the Court must assume that the  
18 allegations of the complaint are true and that a jury will return a verdict in favor of  
19 the plaintiff on all claims asserted in their complaint. *Kenneth Rothschild Trust*, 199  
20 F. Supp. 2d at 1001. The ultimate inquiry is the amount that is put “in controversy”  
21 by the plaintiff’s complaint, and not how much, if anything, the defendant will  
22 actually owe. *Rippee*, 408 F. Supp. 2d at 986. In determining the amount in  
23 controversy, the Court may consider damages awarded in similar cases. *Kroske v.*  
24 *U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005).

25 38. Here, in addition to Plaintiff’s wage and hour claims addressed above,  
26 Plaintiff’s Complaint alleges four additional individual causes of action (“disability  
27 claims”): (1) discrimination and retaliation in violation of FEHA; (2) failure to  
28 engage in the interactive process in violation of Cal. Gov. Code § 12940(n); (3)

1 failure to provide reasonable accommodation in violation of Cal. Gov. Code §  
2 12940(m); and, (4) wrongful termination in violation of public policy. (See Exh. A,  
3 Complaint.) Although Defendant denies the validity and merit of Plaintiff's claims  
4 and the underlying allegations, and further denies that Plaintiff is entitled to any  
5 relief, Plaintiff's allegations establish an amount in controversy in excess of the  
6 jurisdictional minimum of \$75,000, exclusive of interest and costs.

7 **1. There Is Approximately \$300,000 In Controversy Based On**  
8 **Plaintiff's Individual Disability Claims (Causes of Action 10**  
9 **through 13)**

10 39. Should Plaintiff prevail on her disability claims, she potentially could  
11 recover lost wages and benefits through the date of trial, as alleged in her Complaint.  
12 (Exh. A, Complaint Prayer for Relief ¶ 3.) Plaintiff was employed by Defendant as  
13 a full-time employee, who was scheduled to work 40 hours a week. (Kopra Decl. ¶  
14 6.) At the end of Plaintiff's employment with Defendant, Plaintiff's hourly rate of  
15 pay was \$30.5757. (*Id.* at ¶ 6.) Plaintiff's employment ended on February 4, 2022.  
16 (*Id.* at ¶ 7.) If Plaintiff were to recover back wages from February 4, 2022 to the  
17 present, she potentially could recover approximately **\$73,381.68** [\$30.5757 per hour  
x 40 hours per week x 60 weeks].

18 40. In addition, front pay awards in California frequently span a number of  
19 years. See *Rabaga-Alvarez v. Darn Indus., Inc.*, 55 Cal. App. 3d 91, 97 (1976) (four  
20 years); *Drzewiecki v. H&R Block, Inc.*, 24 Cal. App. 3d 695, 705 (1972) (ten years).  
21 Even conservatively estimating that Plaintiff seeks front pay benefits for only the  
22 three years after trial, the amount of future wages in controversy in this case would  
23 total at least an additional **\$190,792.37** [\$30.5757 per hour x 40 hours per week x  
24 156 weeks].

25 41. Plaintiff also alleges punitive damages. (Exh. A, Complaint Prayer for  
26 Relief ¶ 3.) Plaintiff's potential recovery of such damages further augments the  
27 foregoing amounts and demonstrates that the jurisdictional prerequisite for removal  
28 of this action is met. *Gibson v. Chrysler Corp.*, 261 F.3d 937, 945 (9th Cir. 2001) ("It

1 is well established that punitive damages are part of the amount in controversy in a  
2 civil action.”). Plaintiffs in employment cases have been awarded substantial  
3 punitive damages. *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1034 (N.D. Cal.  
4 2002); *Astorga v. Snap-On Logistics Company*, 2017 WL 4335743 (Cal. Super.)  
5 (awarding \$10,000,000 in punitive damages involving disability discrimination in  
6 violation of FEHA claim). California law does not provide any specific monetary  
7 limit on the amount of punitive damages that may be awarded under Civil Code  
8 section 3294. Indeed, punitive damages awards have equaled as much as four times  
9 the amount of the actual damages award. *State Farm Mutual Auto Ins. Co. v.*  
10 *Campbell*, 538 U.S. 408, 425 (2003). Punitive damages must be considered when  
11 calculating the amount in controversy even if no such damages are clearly pled in the  
12 complaint. *See Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1034 (N.D. Cal. 2002).

13 42. Although Defendant disputes that Plaintiff is entitled to any such award,  
14 plaintiffs in employment cases have been awarded substantial sums for emotional  
15 distress. *See, e.g., Gardenhire v. Hous. Auth. Of Los Angeles*, 85 Cal. App. 4th 236,  
16 240-241 (2002) (affirming judgment, including jury award of \$1.3 million in  
17 emotional distress damages for wrongful termination in violation of public policy  
18 claim).

19 43. Lastly, Plaintiff seeks attorneys’ fees. Attorneys’ fees that are  
20 potentially recoverable by statute also are included in determining the amount in  
21 controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).  
22 In actions brought under the FEHA, the court, in its discretion, may award the  
23 prevailing party reasonable attorneys’ fees. Cal. Gov’t Code § 12965(c)(b).

24 44. Any estimate of attorneys’ fees includes fees over the life of the case,  
25 not just the fees incurred at the time of removal. *Sasso v. Noble Utah Long Beach,*  
26 *LLC*, 2015 WL 898468, at \*5 (C.D. Cal. Mar. 3, 2015). “Recent estimates for the  
27 number of hours expended through trial for employment cases in [the Central District  
28 of California] have ranged from 100 to 300 hours. Therefore, 100 hours is an

1 appropriate and conservative estimate. Accordingly, attorneys’ fees in [a disability  
2 discrimination case alleging violations under FEHA] may reasonably be expected to  
3 equal at least **\$30,000** (100 hours x \$300 per hour).” *Id.* Thus, Plaintiff’s demand for  
4 attorneys’ fees adds, at minimum, \$30,000 to the amount in controversy. *See e.g.,*  
5 *Flannery v. Prentice*, 26 Cal.4th 572 (2001) (upholding an award of attorneys’ fees  
6 under the FEHA for \$971,684); *Dwyer v. Crocker Nat’l Bank*, 194 Cal. App. 3d 1418  
7 (1987) (upholding award of \$75,258 in attorneys’ fees under the FEHA); *Zissu v.*  
8 *Bear, Stearns & Co.*, 805 F.2d 75 (1986) (upholding \$550,000 in attorneys’ fees  
9 awarded under the FEHA); *Begazo v. Passages Silver Strand L.L.C.*, JVR No.  
10 1706070057 (Cal. Super. 2017) (court awarding \$375,568 in attorneys’ fees in FEHA  
11 action).

12 45. In sum, although Defendant does not concede Plaintiff’s disability  
13 claims (causes of action 10 through 13) have any merit, when the relief sought by  
14 Plaintiff is taken as a whole, the amount in controversy for Plaintiff’s disability  
15 claims alone conservatively amounts to **\$294,174.05**. This amount does not even  
16 include emotional distress damages or punitive damages, which may reasonably be  
17 estimated to be in the range of \$1,176,696 (four times the amount of actual  
18 damages) to \$10,000,000.00.

19 **2. There Is At Least \$10.000 In Controversy Based On**  
20 **Plaintiff’s Individual Wage And Hour Claims**

21 46. In addition to Plaintiff’s disability claims, Plaintiff’s fourth and fifth  
22 causes of action assert that Defendant is liable for not providing meal and rest  
23 periods. (Exh. A, Compl. at ¶¶ 92-99.) As explained above, an employer who fails  
24 to provide a meal or rest period is liable for “one additional hour of pay at the  
25 employee’s regular rate of compensation for each workday that the meal or rest or  
26 recovery period is not provided.” Cal. Lab. Code § 226.7(b). Here, Plaintiff “may  
27 recover up to two additional hours of pay on a single work day for meal period and  
28 rest period violations—one for failure to provide a meal period and another for failure

1 to provide a rest period.” *United Parcel Serv. Wage & Hour Cases*, 196 Cal. App.  
2 4th at 70. The amount in controversy as it relates to Plaintiff’s fourth and fifth causes  
3 of action will be calculated by:

4 Hourly Rate x Number of Alleged Unpaid Rest Breaks + Hourly Rate x  
5 Number of Alleged Unpaid Meal Breaks

6 a. Hourly Rate. Plaintiff’s hourly rate was \$30.5757. (Kopra Decl.  
7 ¶ 6.)

8 b. Number of alleged unpaid meal and rest breaks. During the  
9 putative class period, from February 1, 2019 through February 25, 2023, Plaintiff  
10 worked approximately 77 weeks. (Kopra Decl. ¶ 7.) Plaintiff alleges that Plaintiff  
11 was never provided compliant rest breaks because, “DEFENDANT’S policy  
12 restricted PLAINTIFF . . . from unconstrained walks and is unlawful based on  
13 DEFENDANT’s rule which states PLAINTIFF . . . cannot leave the work premises  
14 during their rest period.” (Exh. A, Compl. at ¶ 12.) Plaintiff further alleges that  
15 “Plaintiff . . . [was] periodically denied [her] proper rest periods by Defendant and  
16 Defendant’s managers.” (*Id.* at ¶ 97.) Plaintiff alleges that “Defendant from time to  
17 time failed to provide all the legally required off-duty meal breaks to Plaintiff”. (*Id.*  
18 at ¶ 93.) Here, assuming a conservative 10% violation rate for meal and rest breaks,  
19 the amount in controversy related to these two claims is at least **\$2,354.33** [\$30.5757  
20 per hour x 77 workweeks x 5 days per week x 10% violation rate x 2 (one meal break  
21 and one rest break)]. *Avila v. Rule21, Inc.*, 432 F. Supp. 3d 1175 (E.D. Cal. 1175)  
22 (“District courts have found . . . that violation rates of 25% to 60% can be reasonably  
23 assumed as a matter of law based on ‘pattern and practice’ or ‘policy and practice’  
24 allegation.”)

25 47. Plaintiff’s seventh cause of action alleges failure to reimburse Plaintiff  
26 for required expenses. (Exh. A, Compl. at ¶¶ 104-107.) Plaintiff alleges that  
27 Defendant’s policy and practice was not to reimburse for expenses resulting from  
28 using their personal cellular phones and home offices within the course and scope of



1 employment for Defendant. (*Id.* at ¶ 106.) Plaintiff demands reimbursement for  
2 expenditures or losses incurred with interest at the statutory rate and costs under  
3 California Labor Code section 2802. (*Id.* at ¶ 107.) Plaintiff worked approximately  
4 77 weeks from December 2019 to February 4, 2022. (Kopra Decl. ¶ 7.) Assuming  
5 a weekly expense under-reimbursement amount of \$10, the amount in controversy  
6 on this claim is approximately **\$770.00** (77 weeks x \$10 per week).

7 48. Plaintiff's eighth cause of action alleges waiting time penalties for  
8 Defendant's failure to pay final wages when due. (Exh. A, Compl. at ¶¶ 108-115.)  
9 California Labor Code section 201 provides that if an employer discharges an  
10 employee, the wages earned and unpaid at the time of discharge are due and payable  
11 immediately. *See* Cal. Lab. Code § 201. California Labor Code section 203 provides  
12 for one-day's wages for each day an employee who has separated from his or her  
13 employment is not paid all wages owed, up to thirty days of wages. *See* Cal. Labor  
14 Code § 203. Plaintiff was terminated on February 4, 2022. (Kopra Decl. ¶ 7.)  
15 Plaintiff was regularly scheduled to work eight hours per day. (Kopra Decl. ¶ 6.)  
16 Accordingly, the amount in controversy for Plaintiff's eighth cause of action is  
17 **\$7,338.17** (\$30.5757 per hour x 8 hours per day x 30 days).

18 49. In sum, although Defendant does not concede Plaintiff's wage and hour  
19 claims have any merit, when the relief sought by Plaintiff for her wage and hour  
20 claims plus her disability claims are taken as a whole, the amount in controversy for  
21 Plaintiff's claims amounts to over **\$304,636.55**, which does not even include all of  
22 her alleged claims (e.g., minimum wage, overtime, sick pay) nor reasonable amounts  
23 for emotional distress or punitive damages. This conservative amount significantly  
24 exceeds the \$75,000 jurisdictional threshold. Thus, this Court has original  
25 jurisdiction over the claims asserted by Plaintiff in this action based on diversity of  
26 citizenship jurisdiction under 28 U.S.C. §§ 1332(a)(1) and 1441(a).

## 27 **VI. NOTICE OF REMOVAL TO COURT AND PARTIES**

28 50. Contemporaneously with filing this Notice of Removal in the United

1 States District Court for the Central District of California, written notice of this filing  
2 will also be given by the undersigned to Plaintiff's counsel of record: Norman B.  
3 Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw,  
4 Blumenthal Nordrehaug Bhowmik De Blow LLP, 2255 Calle Clara, La Jolla, CA  
5 92037. In addition, a copy of this Notice of Removal will be filed with the Clerk of  
6 Court of the County of Orange, as required by 28 U.S.C. § 1446(d).

7 **VII. CONCLUSION**

8 Defendant therefore removes this civil action from the Superior Court of the  
9 State of California, County of Orange, to the United States District Court for the  
10 Central District of California.

11 Dated: March 30, 2023

LITTLER MENDELSON, P.C.

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15 \_\_\_\_\_  
16 Sophia B. Collins  
17 Anthony Ly  
18 Yuri Choy

19 Attorneys for Defendant  
20 THE COCA-COLA COMPANY  
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